

AMENDED IN SENATE MARCH 24, 2014

SENATE BILL

No. 943

Introduced by Senator Beall

February 4, 2014

An act to ~~amend Section 19130 of~~ add Part 1.5 (commencing with Section 18300) to Division 5 of Title 2 of the Government Code, relating to ~~civil service; the California State University.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 943, as amended, Beall. ~~State agencies; personal services contracts; California State University; personal services contracting.~~

Existing provisions of the State Civil Service Act establish standards for the use of personal services contracts by state agencies. An existing provision of the California Constitution excludes the officers and employees of the California State University from the state civil service.

Existing law authorizes the Trustees of the California State University to enter into agreements with public or private agencies, persons, officers, institutions, corporations, associations, or foundations for the performance of acts or for the furnishing of services, facilities, materials, goods, supplies, or equipment by or for the trustees or for the joint performance of an act or function or the joint furnishing of services and facilities by the trustees and the other party to the agreement.

This bill would establish standards for personal services contracts, similar to those of the State Civil Service Act, that would be applicable to the California State University. The bill would require the Public Employment Relations Board to be notified of any proposed or executed personal services contract, and would require the board, upon request of an employee organization, to review and disapprove a contract that does not meet those standards.

~~Existing law establishes standards for the use of personal services contracts by state agencies. Existing law provides that personal services contracting is permissible to achieve cost savings when certain conditions are met, including, but not limited to, that the contracting agency demonstrates that the proposed contract will result in actual overall cost savings to the state.~~

~~This bill would make a nonsubstantive change that provision.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Part 1.5 (commencing with Section 18300) is
2 added to Division 5 of Title 2 of the Government Code, to read:

3
4 PART 1.5. PERSONAL SERVICES CONTRACTS FOR
5 CALIFORNIA STATE UNIVERSITY
6

7 18300. (a) For purposes of this part, the following definitions
8 apply:

9 (1) "Board" means the Public Employment Relations Board.

10 (2) "Trustees" means the Trustees of the California State
11 University.

12 (3) "University" means an institution of higher education that
13 is part of the California State University.

14 (b) If any provision of this part conflicts with Section 89036 of
15 the Education Code, the provisions of this part shall prevail.

16 18301. (a) The purpose of this part is to establish standards
17 for the use of personal services contracts by the California State
18 University.

19 (b) Personal services contracting is permissible to achieve cost
20 savings when all the following conditions are met:

21 (1) The university clearly demonstrates that the proposed
22 contract will result in actual overall cost savings to the California
23 State University. In comparing costs, the following shall apply:

24 (A) There shall be included the California State University's
25 additional cost of providing the same service as proposed by a
26 contractor. These additional costs shall include the salaries and
27 benefits of additional staff that would be needed and the cost of

1 *additional space, equipment, and materials needed to perform the*
2 *function.*

3 *(B) The California State University's indirect overhead costs*
4 *shall not be included unless these costs can be attributed solely to*
5 *the function in question and would not exist if that function was*
6 *not performed in regular university employment service. Indirect*
7 *overhead costs shall mean the pro rata share of existing*
8 *administrative salaries and benefits, rent, equipment costs, utilities,*
9 *and materials.*

10 *(C) There shall be included in the cost of a contractor providing*
11 *a service any continuing costs to the California State University*
12 *that would be directly associated with the contracted function.*
13 *These continuing costs shall include, but not be limited to, those*
14 *for inspection, supervision, and monitoring.*

15 *(2) Proposals to contract out work shall not be approved solely*
16 *on the basis that savings will result from lower contractor pay*
17 *rates or benefits. Proposals to contract out work shall be eligible*
18 *for approval if the contractor's wages are at the industry's level*
19 *and do not significantly undercut university pay rates.*

20 *(3) The contract does not cause the displacement of university*
21 *employees. The term "displacement" includes layoff, demotion,*
22 *involuntary transfer to a new classification, involuntary transfer*
23 *to a new location requiring a change of residence, and time base*
24 *reductions. Displacement does not include changes in shifts or*
25 *days off, or reassignment to other positions within the same*
26 *classification and general location.*

27 *(4) The contract does not adversely affect the trustees'*
28 *nondiscrimination efforts.*

29 *(5) The savings shall be large enough to ensure that the savings*
30 *will not be eliminated by private sector and state cost fluctuations*
31 *that could normally be expected during the contracting period.*

32 *(6) The amount of savings clearly justify the size and duration*
33 *of the contracting agreement.*

34 *(7) The contract is awarded through a publicized, competitive*
35 *bidding process.*

36 *(8) The contract includes specific provisions pertaining to the*
37 *qualifications of the staff that will perform the work under the*
38 *contract, as well as assurance that the contractor's hiring practices*
39 *meet applicable nondiscrimination standards.*

1 (9) *The potential for future economic risk to the trustees from*
2 *potential contractor rate increases is minimal.*

3 (10) *The contract is with a firm. A “firm” means a corporation,*
4 *partnership, nonprofit organization, or sole proprietorship.*

5 (11) *The potential economic advantage of contracting is not*
6 *outweighed by the public’s interest in having a particular function*
7 *performed directly by university employees.*

8 (c) *Personal services contracting also shall be permissible when*
9 *any of the following conditions are met:*

10 (1) *The contract is for a new university function and the*
11 *Legislature has specifically mandated or authorized the*
12 *performance of the work by independent contractors.*

13 (2) *The services contracted are not available through regular*
14 *university employment procedures, cannot be performed*
15 *satisfactorily by university employees, or are of such a highly*
16 *specialized or technical nature that the necessary expert*
17 *knowledge, experience, and ability are not available through the*
18 *pool of university employees.*

19 (3) *The services are incidental to a contract for the purchase*
20 *or lease of real or personal property. Contracts under this*
21 *criterion, known as “service agreements,” shall include, but not*
22 *be limited to, agreements to service or maintain office equipment*
23 *or computers that are leased or rented.*

24 (4) *The legislative, administrative, or legal goals and purposes*
25 *cannot be accomplished through the utilization of persons selected*
26 *pursuant to the regular university employment process. Contracts*
27 *are permissible under this criterion to protect against a conflict*
28 *of interest or to ensure independent and unbiased findings in cases*
29 *where there is a clear need for a different, outside perspective.*
30 *These contracts shall include, but not be limited to, obtaining*
31 *expert witnesses in litigation.*

32 (5) *The contractor will provide equipment, materials, facilities,*
33 *or support services that could not feasibly be provided by university*
34 *employees in the location where the services are to be performed.*

35 (6) *The contractor will conduct employee training courses for*
36 *which appropriately qualified university employee instructors are*
37 *not available, provided that permanent instructor positions in*
38 *academies or similar settings shall be filled through the regular*
39 *university employment process.*

1 (7) *The services are of such an urgent, temporary, or occasional*
2 *nature that the delay incumbent in their implementation through*
3 *regular university employment procedures would frustrate their*
4 *very purpose.*

5 (d) *All persons who provide services to the California State*
6 *University under conditions the board determines constitute an*
7 *employment relationship shall be retained pursuant to regular*
8 *university employment procedures.*

9 18302. (a) *A university that proposes to execute a personal*
10 *services contract pursuant to this part shall notify the board of*
11 *that intention. All organizations that represent university employees*
12 *who perform the type of work to be contracted, and any person or*
13 *organization that has filed with the board a request for notice,*
14 *shall be contacted immediately by the board upon receipt of this*
15 *notice so that they may be given a reasonable opportunity to*
16 *comment on the proposed contract.*

17 (b) *When a university submits a proposed contract, the university*
18 *shall retain and provide all data and other information relevant*
19 *to the contract and necessary for a specific application of the*
20 *standards for personal services contracts established in Section*
21 *18301.*

22 (c) *An employee organization may request, within 10 days of*
23 *notification, the board to review a contract proposed or executed*
24 *pursuant to this part. Upon a request, the board shall review the*
25 *contract for compliance with the standards for personal services*
26 *established in Section 18301. The board shall disapprove a*
27 *contract that does not comply with the standards.*

28 (d) *The board may adopt regulations to administer the*
29 *provisions of this part relating to the review of personal service*
30 *contracts.*

31 18303. (a) *Upon the request of an employee organization that*
32 *represents employees of the California State University, the board*
33 *shall review the adequacy of a personal services contract proposed*
34 *or executed pursuant to this part. A contract that was reviewed at*
35 *the request of an employee organization when it was proposed*
36 *need not be reviewed again after its execution.*

37 (b) (1) *Unless a personal services contract is necessary due to*
38 *a sudden and unexpected occurrence that poses a clear and*
39 *imminent danger, requiring immediate action to prevent or mitigate*
40 *the loss or impairment of life, health, property, or essential public*

1 *services, the contract shall not be executed until the university*
2 *proposing to execute the contract has notified all organizations*
3 *that represent university employees who perform the type of work*
4 *to be contracted.*

5 *(2) At a minimum, the notice shall include a full copy of the*
6 *proposed contract. The university may redact specific confidential*
7 *or proprietary information from the notice.*

8 *(3) The board shall establish a process to certify the notification*
9 *in paragraph (1).*

10 *18304. (a) If a contract is disapproved by action of the board,*
11 *the university shall immediately discontinue that contract, unless*
12 *ordered otherwise by the board. The university shall not circumvent*
13 *or disregard the board's action by entering into another contract*
14 *for the same or similar services or to continue the services that*
15 *were the subject of the contract disapproved by the board.*

16 *(b) If a university is ordered to discontinue a contract, the*
17 *university shall serve notice of the discontinuation of the contract*
18 *to the vendor within 15 days from the board's final action unless*
19 *a different notice period is specified. A copy of the notice also shall*
20 *be served on the board and the employee organization that filed*
21 *the contract challenge. Failure to serve this notice may be grounds*
22 *for rejection of future contracts for the same or similar services*
23 *that were discontinued.*

24 ~~SECTION 1. Section 19130 of the Government Code is~~
25 ~~amended to read:~~

26 ~~19130. The purpose of this article is to establish standards for~~
27 ~~the use of personal services contracts.~~

28 ~~(a) Personal services contracting is permissible to achieve cost~~
29 ~~savings when all of the following conditions are met:~~

30 ~~(1) The contracting agency clearly demonstrates that the~~
31 ~~proposed contract will result in actual overall cost savings to the~~
32 ~~state, provided that:~~

33 ~~(A) In comparing costs, there shall be included the state's~~
34 ~~additional cost of providing the same service as proposed by a~~
35 ~~contractor. These additional costs shall include the salaries and~~
36 ~~benefits of additional staff that would be needed and the cost of~~
37 ~~additional space, equipment, and materials needed to perform the~~
38 ~~function.~~

39 ~~(B) In comparing costs, there shall not be included the state's~~
40 ~~indirect overhead costs unless these costs can be attributed solely~~

1 to the function in question and would not exist if that function was
2 not performed in state service. Indirect overhead costs shall mean
3 the pro rata share of existing administrative salaries and benefits;
4 rent, equipment costs, utilities, and materials.

5 (C) In comparing costs, there shall be included in the cost of a
6 contractor providing a service any continuing state costs that would
7 be directly associated with the contracted function. These
8 continuing state costs shall include, but not be limited to, those
9 for inspection, supervision, and monitoring.

10 (2) Proposals to contract out work shall not be approved solely
11 on the basis that savings will result from lower contractor pay rates
12 or benefits. Proposals to contract out work shall be eligible for
13 approval if the contractor's wages are at the industry's level and
14 do not significantly undercut state pay rates.

15 (3) The contract does not cause the displacement of civil service
16 employees. The term "displacement" includes layoff, demotion,
17 involuntary transfer to a new class, involuntary transfer to a new
18 location requiring a change of residence, and time base reductions.
19 Displacement does not include changes in shifts or days off, nor
20 does it include reassignment to other positions within the same
21 class and general location.

22 (4) The contract does not adversely affect the state's affirmative
23 action efforts.

24 (5) The savings shall be large enough to ensure that they will
25 not be eliminated by private sector and state cost fluctuations that
26 could normally be expected during the contracting period.

27 (6) The amount of savings clearly justify the size and duration
28 of the contracting agreement.

29 (7) The contract is awarded through a publicized, competitive
30 bidding process.

31 (8) The contract includes specific provisions pertaining to the
32 qualifications of the staff that will perform the work under the
33 contract, as well as assurance that the contractor's hiring practices
34 meet applicable nondiscrimination, affirmative action standards.

35 (9) The potential for future economic risk to the state from
36 potential contractor rate increases is minimal.

37 (10) The contract is with a firm. A "firm" means a corporation,
38 partnership, nonprofit organization, or sole proprietorship.

1 ~~(11) The potential economic advantage of contracting is not~~
2 ~~outweighed by the public's interest in having a particular function~~
3 ~~performed directly by state government.~~

4 ~~(b) Personal services contracting also shall be permissible when~~
5 ~~any of the following conditions can be met:~~

6 ~~(1) The functions contracted are exempted from civil service~~
7 ~~by Section 4 of Article VII of the California Constitution, which~~
8 ~~describes exempt appointments.~~

9 ~~(2) The contract is for a new state function and the Legislature~~
10 ~~has specifically mandated or authorized the performance of the~~
11 ~~work by independent contractors.~~

12 ~~(3) The services contracted are not available within civil service,~~
13 ~~cannot be performed satisfactorily by civil service employees, or~~
14 ~~are of such a highly specialized or technical nature that the~~
15 ~~necessary expert knowledge, experience, and ability are not~~
16 ~~available through the civil service system.~~

17 ~~(4) The services are incidental to a contract for the purchase or~~
18 ~~lease of real or personal property. Contracts under this criterion,~~
19 ~~known as "service agreements," shall include, but not be limited~~
20 ~~to, agreements to service or maintain office equipment or~~
21 ~~computers that are leased or rented.~~

22 ~~(5) The legislative, administrative, or legal goals and purposes~~
23 ~~cannot be accomplished through the utilization of persons selected~~
24 ~~pursuant to the regular civil service system. Contracts are~~
25 ~~permissible under this criterion to protect against a conflict of~~
26 ~~interest or to insure independent and unbiased findings in cases~~
27 ~~where there is a clear need for a different, outside perspective.~~
28 ~~These contracts shall include, but not be limited to, obtaining expert~~
29 ~~witnesses in litigation.~~

30 ~~(6) The nature of the work is such that the Government Code~~
31 ~~standards for emergency appointments apply. These contracts shall~~
32 ~~conform with Article 8 (commencing with Section 19888) of~~
33 ~~Chapter 2.5 of Part 2.6.~~

34 ~~(7) State agencies need private counsel because a conflict of~~
35 ~~interest on the part of the Attorney General's office prevents it~~
36 ~~from representing the agency without compromising its position.~~
37 ~~These contracts shall require the written consent of the Attorney~~
38 ~~General, pursuant to Section 11040.~~

1 ~~(8) The contractor will provide equipment, materials, facilities,~~
2 ~~or support services that could not feasibly be provided by the state~~
3 ~~in the location where the services are to be performed.~~

4 ~~(9) The contractor will conduct training courses for which~~
5 ~~appropriately qualified civil service instructors are not available,~~
6 ~~provided that permanent instructor positions in academies or similar~~
7 ~~settings shall be filled through civil service appointment.~~

8 ~~(10) The services are of such an urgent, temporary, or occasional~~
9 ~~nature that the delay incumbent in their implementation under civil~~
10 ~~service would frustrate their very purpose.~~

11 ~~(e) All persons who provide services to the state under~~
12 ~~conditions the board determines constitute an employment~~
13 ~~relationship shall, unless exempted from civil service by Section~~
14 ~~4 of Article VII of the California Constitution, be retained under~~
15 ~~an appropriate civil service appointment.~~